

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY J. STOKES,

Petitioner,

v.

Case No. 06-CV-10734
Honorable George Caram Steeh
United States District Court Judge

HUGH WOLFENBARGER,

Respondent,

**ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION
FOR AN EVIDENTIARY HEARING AND MOTION FOR ORAL ARGUMENT**

Before the Court are Petitioner Anthony J. Stokes's motions: (1) motion for reconsideration for an evidentiary hearing, and (2) motion for oral argument on the merits of his petition for writ of habeas corpus. For the reasons stated below, both motions are denied.

I.

If a habeas petition is not dismissed at a previous stage in the proceeding, the judge, after the answer and the transcript and record of state court proceedings are filed, shall, upon a review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the petition as justice shall require. 28 U.S.C. foll. § 2254, Rule 8(a); *Hence v. Smith*, 49 F. Supp. 2d 547, 549 (E.D. Mich. 1999) (Gadola, J.). It is within the district court's discretion to determine whether a habeas petitioner is entitled to an evidentiary hearing. *Brofford v. Marshall*, 751 F. 2d 845, 853 (6th Cir. 1985). An evidentiary hearing is not required where the record is

complete or if the petition raises only legal claims that can be resolved without the taking of additional evidence.

Ellis v. Lynaugh, 873 F. 2d 830, 840 (5th Cir. 1989); *United States v. Sanders*, 3 F. Supp. 2d 554, 560 (M.D. Pa. 1998).

This is Petitioner's second motion for a request for an evidentiary hearing in this case. The Court, on September 5, 2006, denied Petitioner's first motion, stating that it would deny the motion for an evidentiary hearing without prejudice because the Court had not yet received an answer or the state court record from respondent. Without those materials, the Court was unable to determine whether an evidentiary hearing on Petitioner's claims was needed.

The Court has now received the necessary materials, and has determined, after a careful review of the state court record, that the motion for reconsideration for an evidentiary hearing will be denied with prejudice because the record in this case is complete and the issues presented involve legal claims that can be resolved without taking additional evidence. On that basis, the Court **DENIES** Petitioner's motion for reconsideration for an evidentiary hearing.

II.

Regarding Petitioner's motion for oral argument on the merits of his petition for writ of habeas corpus, after a careful review of the motion and the petition, the Court finds that, because the factual record in this case is satisfactory and not overly detailed, complex, or lengthy, oral argument would not assist the Court in resolving the issues presented. On that basis, the Court **DENIES** Petitioner's motion for oral argument.

III.

ACCORDINGLY,

IT IS ORDERED that Petitioner's motion for reconsideration for an evidentiary hearing is **DENIED WITH PREJUDICE** and Petitioner's motion for oral argument on the merits of his petition for writ of habeas corpus is also **DENIED**.

Dated: December 6, 2006

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on December 6, 2006, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk